

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)	
)	
Antoon J.G. van Rossum and)	Examiner:
Antonius F.M. Bertels)	Nicole R. Blan
)	
Serial No.: 10/815,942)	
)	
Filed: April 2, 2004)	Art Unit: 1792
)	
Title: REMOVABLE PROTECTIVE COATING)	Conf. No.: 8940

Commissioner for Patents
Mail Stop-Appeal
P.O. Box 1450
Alexandria, VA 22313-1450

REPLY BRIEF

Dear Sir:

This is in reply to the Examiner's Answer mailed January 26, 2009. Please charge any appropriate fees to our Deposit Account No. 19-0733. In addition, any extensions of time necessary for acceptance or entry of this paper are hereby requested.

I. ARGUMENT

In the Appeal Brief filed November 17, 2008, the Appellants asserted at page 8 that van Rossum failed to teach the claimed vinyl polymer based on one or more of the monomers selected from the group consisting of methyl methacrylate, butyl acrylate, 2-ethylhexyl acrylate, ethyl acrylate, styrene, methacrylic acid and acrylic acid. The Examiner has not rebutted that position and the evidence of record supports Appellants'

assertion that the claimed polymer is different from that disclosed in van Rossum. See Declaration Under 37 C.F.R. §1.132 executed by Antonius Bertels.

The Examiner believes at page 4 of the Examiner's Answer that Yoshida teaches an acrylic polymer with the claimed molecular weight [10,000 to 500,000; col. 7, lines 45-46]t, the claimed acid value [65 mg/g; col. 7, line 44], the claimed polydispersity [4; col. 7, lines 47-48] and the claimed glass transition temperature [0°C or higher; col. 7, lines 46-47] *in a removable protective coating* [col. 1, lines 12-15; col. 8, lines 25-27]. The Examiner has not alleged that Yoshida teaches the combination of any of its polymers with a greenhouse as a removable protective coating. It is clear that no such use is specifically disclosed.

The Examiner's citations to Yoshida describe an alkali-soluble film and not a coating. The film is formed by hot melt methods of making a film. Col. 7 lines 61-64. The utilities of the film are described at col. 8 lines 20-27 as follows:

Therefore, the film is useful as a packaging film, a base material of labels, and in addition, as a separating film in a case of storing specific substances in condition of separating each other for a short period of time. For practical examples the separating film there are cited a Film for agricultural use, packaging of the washing, packaging of food for animals, a temporarily protecting film and so forth.

The Examiner relies on col. 8 lines 25-27 for the teaching of a removable protective coating and having the claimed characteristics. However, nowhere does col. 8, lines 25-27 recite a removable protective coating, as alleged by the Examiner. Col. 1, lines 12-15 recite the word "coating," but provide no context or characteristics of a polymer forming a coating, removable, protective or otherwise. One of skill has no idea of the characteristics making up such a coating. Instead, it is clear the utilities for the film describe a plastic wrap, such as Saran wrap, to cover or separate items, and not a

coating, as described by the specification and understood by one of skill in the art.

The specification teaches that a coating is created by spraying or brushing (Specification at page 10 lines 9-11) which would create a uniform layer over the surface of an object, such as a pane of glass. Clearly, the plastic wrap of Yoshida is not a coating in the context of the invention.

Also, the claimed coating is required to adhere to the transparent surface. The specification teaches that the protective coating “exhibits sufficient adhesion to the surface of a greenhouse.” Specification at page 1 lines 21-23. “Surprisingly, a protective coating according the invention has been found to have excellent adhesive power.” Specification at page 3 lines 33-34. “It has been found that a protective coating containing these components in these amounts has both optimum protective action and optimum adhesive strength.” Specification at page 4 lines 22-25.

The Examiner’s citation to the alkali-soluble film of Yoshida, which is the only support relied on by the Examiner for the claimed binder, simply does not provide any teaching that the film fashioned from the polymer has any adhesive properties, as required by the claims. In fact, Yoshida’s disclosed utilities for the alkali-soluble film, namely “packaging of the washing, packaging of food for animals” would not work if the film had adhesive properties, since the materials inside the packaging would adhere or stick to the inside of the packaging. Further, the disclosure of “temporarily protecting film” and “film for agricultural use” is no help in understanding whether the film has adhesive properties. Given the disclosed use as packaging, one of skill in the art would understand that the film has no adhesive properties, whether “temporarily protecting” or “for agricultural use.”

The Examiner has stated at page 5 of the Examiner's Answer that "the polymer is known and presumed to have the same properties of it being adhered to glass, since the prior art teaches it is capable of being performed." However, the record evidence in Yoshida of the utilities of the alkali-soluble film, which would be rendered useless by adherence as discussed above, is strong evidence that Yoshida's polymer lacks the feature of adhering to a transparent surface, as presently claimed. The claims require that the protective coating be adhered to the transparent surface and one of skill in the art would understand from Yoshida itself that the packaging material does not possess that feature. The Examiner has no evidence to contradict the record evidence.

At page 10 of the Examiner's Answer, the Examiner states that "the burden is placed on the appellant's to establish unexpected results pertaining to the claim limitations." Applicants respectfully submit that they have done just that. The specification teaches that ***"Surprisingly, a protective coating according the invention has been found to have excellent adhesive power."*** Specification at page 3 lines 33-34 [emphasis added]. As one of skill in the art would not understand Yoshida's film to have adhesive properties from the disclosed utilities, Appellants' invention of a greenhouse with the claimed protective coating adhered to the transparent surface is surprising indeed, insofar as the Examiner believes it is the same material.

At page 10, the Examiner further states that "[f]inally, no proof has been established that any of the combinations within the ranges cannot meet the claimed limitations." Appellants' respectfully submit that it is not their burden to systematically test each and every possible combination in a prior art reference to disprove whether claim limitations are inherently met. This is not the law. Rather it is the Examiner's

burden to prove that a reference or combination of references teaches all of the claim limitations.

In the present case based on the record evidence, Yoshida clearly does not disclose any adhesive properties of its film. Yoshida clearly discloses utilities for its film that would fail if it had adhesive properties. The only logical conclusion is that Yoshida's material lacks the adhesive property to adhere to the transparent surface of the greenhouse. Should one of skill replace the coating of van Rossum on its greenhouse with the film of Yoshida, it would fail because it will not adhere to the transparent surface, by Yoshida's own characterization.

The Appellants' unexpected discovery that the claimed binder has advantageous adhesive properties as applied to a transparent surface of a greenhouse supports patentability. Given the unexpected result achieved by Appellants, the Examiner's reliance on *In re Aller* is inapposite. There can be no argument of mere optimization when unexpected results are achieved. Similarly, hindsight reasoning is being used to bind van Rossum together with Yoshida, since the unexpected results counsel against such a combination.

Regarding the Examiner's rejections based on JP 51127181 ("Sato") in view of Yoshida (US 5,574,117), the Examiner is again relying on Yoshida for the teaching of the polymer. The Examiner's main reason for selecting Yoshida is the asserted teaching "of the specific properties for successful use in agriculture." See Examiner's Answer at page 12. However, this basis provides no factual foundation for the Examiner to conclude any expectation of successfully providing a greenhouse with the claimed protective coating adhered to the transparent substrate. Appellants have no idea what "successful use in

agriculture” means and one of skill in the art would not either. It certainly would not lead one of skill in the direction of a greenhouse, as opposed to any other aspect of agriculture. To assert otherwise, supports Appellant’s position of hindsight reconstruction. The Examiner has essentially set forth the same reasoning to combine Yoshida with Sato as she did with van Rossum. Accordingly, Appellants incorporate herein their arguments presented above with respect to Yoshida.

With respect to Sato, the Examiner disputes Appellants’ position that removing the film of Sato will remove the transparent surface, leaving openings in the greenhouse. Appellants’ referred to this in their appeal brief as the entire wall being removed. Appellants intended to convey that removal of the film of Sato would effectively open up the greenhouse, because there would be no film covering the greenhouse. This is still true. Sato teaches a polymer film having a metal oxide coating. Sato provides no teaching that the polymer film with the metal oxide coating is then applied to a transparent surface of a greenhouse. In fact, Sato teaches that the “film is used as a greenhouse film for agriculture so that the thin metal oxide film layer is set as the inner surface” See Sato at page 9. If the film were set against an existing transparent surface, the oxide film layer would not be the inner surface as one side of the transparent surface would be the inner surface. Since Sato requires the oxide film layer being the inner surface, removing the polymer film to which the oxide film layer is attached, will open the greenhouse.

II. CONCLUSION

Based on the arguments presented above and Appellants' Appeal Brief, Appellants respectfully request reconsideration and allowance of the case.

Respectfully submitted

Dated: _____

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John P. Iwanicki, Reg. No. 34,628
BANNER & WITCOFF, LTD
28 State Street, 28th Floor
Boston, MA 02109
(617) 720-9600